

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**APRIL 26, 2007**

**An informational meeting of the Commission for Human Rights was held in the agency conference room on Thursday, April 26, 2007. Present at the meeting were Commissioners Camille Vella-Wilkinson, and Dr. John B. Susa, Chairperson. Absent were Iraidia Williams, Alton W. Wiley, Jr., Jean Stover, Alberto Aponte Cardona and Randolph Lowman. The meeting was called to order at 9:20 a.m. Also at the meeting was Rochelle Lee whose appointment as a Commissioner is pending approval of the Senate.**

**The minutes of March 29, 2007 were not approved because there was no quorum present.**

**Status Report: Michael D. Évora, Executive Director-**

**A written report was handed out. All new information was in bold print.**

**The Executive Director reported that he adopted and implemented a policy**

**on the minimum requirements of case production to the investigative staff as of April 1, 2007.**

**Case Production Report - Attached**

**Aged Case Report - Attached**

**Outreach Report - Attached**

## **STATUS REPORT - COMMISSIONERS**

**GENERAL STATUS: No report at this time.**

**Commissioner Meeting -2- April 26, 2007**

**OUTREACH: Commissioner Vella-Wilkinson reported that she is working with RIAAP in the jobs program which will focus on increasing diversity in corporate handling of resumes. Brown University is having an annual Spring Pow Wow and Commissioner Vella-Wilkinson will attend and will hand out some literature on the**

**Commission.**

**STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis A. Gaschen**

**LITIGATION: Report attached.**

**LEGISLATION: Legal Counsels discussed pending bills.**

**REGULATIONS: No discussion at this time.**

**HEARING SCHEDULE: Discussed**

**DECISIONS: No discussion at this time.**

**The meeting adjourned at 10:30 a.m. The next regular meet-ing of the Commission is scheduled for Thursday, May 31, 2007 at 9:00 am.**

**Respectfully Submitted,**

**Michael D. Évora  
Executive Director**

**Notes taken by: B. Ross**  
**EXECUTIVE DIRECTOR'S**  
**REPORT TO COMMISSIONERS**  
**APRIL 26, 2007**

**I. BUDGET**

**The Commission's budget currently before the General Assembly is as follows:**

	<b>FY 2007</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2008</b>
	<b>(Rev. Req.)</b>	<b>(Revised)</b>	<b>(Request)</b>	<b>(Recomm.)</b>
<b>S</b>	<b>1,038,846</b>	<b>989,630</b>	<b>936,493</b>	<b>984,197</b>
<b>F</b>	<b>286,549</b>	<b>323,679</b>	<b>311,111</b>	<b>404,743</b>
<b>T</b>	<b>1,325,395</b>	<b>1,313,309</b>	<b>1,247,604</b>	<b>1,388,940*</b>

**\*The Commission's original FY 2008 Budget Request contained a 15% cost reduction, as required by the Governor, which would have resulted in the loss of 2.5 positions, leaving the Commission at 12 positions. The budget request before the General Assembly funds the Commission for the full 14.5 positions to which the agency currently is entitled.**

**II. FEDERAL CONTRACTS**

**EEOC – For federal FY 2007, as of 4/19/07, according to EEOC Project Director Marlene Toribio, we have closed 115 co-filed cases. Our FY 2007 contract with EEOC is for 259 cases; we must close 144 more co-filed cases by September 30 to meet the contract. Each case is now payable at \$550.00.**

**\*Pursuant to the Commissioners directive at the March meeting, on April 2 I sent letters to the members of the Rhode Island Congressional Delegation urging them to oppose proposed cuts to EEOC's FY 2007 budget. (Copy attached.) The proposed cuts would be borne disproportionately by the FEPA program, which provides funding to state agencies such as the Commission.**

**Ultimately, Congress approved the EEOC budget with the feared cuts. As a result, the Commission's FY 2007 contract is for a number of cases significantly less than in years past.**

**HUD – For FY 07 (7/1/06 to date), according to HUD Project Director Angela Lovegrove, we have taken in 32 new housing charges, 30 of which are co-filed with HUD. Within this same time period, we have processed 35 housing charges, 33 of which were co-filed with HUD.**

### **III. PERSONNEL**

**No activity to report.**

#### **IV. OUTREACH – Refer to attached report.**

#### **V. GENERAL STATUS**

**&#9679;Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.**

**&#9679;Case Closures – Refer to attached report.**

**&#9679;Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 86% in FY 2006 (from 14 to 2 cases).**

**&#9679;Commissioner (Re)Appointments – Rochelle Lee is now Commissioner Rochelle Lee! Her nomination as the replacement for Cmsr. Stover) was approved by the full Senate on or about May 10.. On May 14, I spoke with Christine DiFilippo (Governor's Office) regarding the status of the reappointments of Cmsrs. Susa and Vella-Wilkinson as well as a nomination for a replacement for Cmsr. Lowman. She said that she is scheduled to meet with the Governor on May 22 and hopes to address these issues with him.**

**&#9679;Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 06 with 387**

**cases in inventory. As of 4/19/07, we had a total of 365 cases in inventory.**

**&#9679;Charge – On March 21, the Commission received notification that an Unfair Labor Practice Charge had been filed with the State Labor Relations Board alleging that the Commission/Executive Director had violated the State Labor Relations Act. The Charge was filed by RI Council 94, AFSCME, AFL-CIO. An informal hearing is scheduled for May 4, 2007. On April 25, Legal Counsel Cynthia Hiatt and I met with Union Local President Sal Lombardi and Vice-President Stephen Strycharz. The matter was tentatively resolved through informal discussion and the charge will be dropped if the Union attorney approves.**

**Respectfully submitted,**

**Michael D. Évora**

**Executive Director**

**Attachments**

**To: Commissioners**

**From: Cynthia Hiatt and Frank Gaschen, Legal Counsels**

**Re: Litigation**

**Date: April 26, 2007**

**Recent developments are in bold.**

**Aquidneck Island v. RICHR, et al.**

**This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale. RICHR's lien was placed against Cardinale not Aquidneck and plaintiff's attorney was advised of this fact. Discovery is ongoing. Answers have been filed by the respondents.**

**Babbitt v. Crescent Park Manor, et al.**

**The Commission intervened as a party plaintiff in this case. Discovery is continuing. Deposition scheduled for next month.**

**Bagnall v. RICHR and WLWC et al.**

**The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation. The complainant's attorney has represented to the Commission that he will file a brief and give the RICHR and respondents whatever reasonable amount of time they would like to file briefs in opposition.**

**Brown University v. RICHR**

**Brown University is seeking a stay of disclosure of Commission**



records. While the Epstein v. Brown University case was in investigation, the Commission issued a subpoena for certain records from Brown University (Brown). A motion to quash was filed and the Preliminary Investigating Commissioner granted the motion in part and denied the motion in part. Brown then went to court to stay the Commission decision. The parties then agreed that Brown would provide the information to the Commission, but the Commission would not disclose the information to the complainant unless it gave Brown thirty days notice. The case then proceeded in investigation, received a mixed ruling of probable cause based on retaliation and no probable cause based on sex. The respondent elected to have the case heard in Superior Court. With the case closed, the complainant sought to review the file, pursuant to Commission regulation. The Commission gave Brown notice that it would allow the complainant to inspect the documents which were subject to the court order unless Brown notified the Commission within thirty days that it had brought the matter for review by the Superior Court. Brown has now brought a motion to stay with the Superior Court. The hearing date is May 11, 2007.

#### **Gaffney v Town of Cumberland et al**

The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21, 2005. Judge Savage indicated that she was close to issuing a decision but wished to give

the parties an opportunity to discuss resolution. After a number of settlement attempts, it did not appear that resolution was near. On 1/4/06, CMH wrote a letter to the parties stating that if she did not hear from them by 2/6 that the case was close to resolution, she was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, CMH wrote Justice Savage and asked her to render her decision as it did not appear that the parties would resolve the matter. On November 30, 2006, after seeking signatures from the other parties which could not be obtained, CMH sent a letter asking Justice Savage to consider issuing a decision in the near future because of Mrs. Gaffney's age.

#### **Horn v. Southern Union Co.**

This is a case filed in federal District Court in Rhode Island. Judge Smith certified a question to the Rhode Island Supreme Court: What is the statute of limitations for the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island (RICRA) for employment discrimination cases. The RICRA prohibits discrimination in contracts, including discrimination in employment contracts. The Commission has joined an amicus brief, filed on March 15, 2007, that argues that the proper statute of limitations is three years. (The employer is arguing that the statute of limitations is one year.) Oral argument took place on April 9, 2007.

#### **Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.**

The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it was filed too late. The Commission filed the administrative record on May 17, 2006. Hearing on the respondent's motion to dismiss was held on June 6, 2006. Judge McGuirl appeared to be ready to rule for the defendants, but offered Mr. Idowu the opportunity to submit more information. He accepted the offer. He retained an attorney who filed a last-minute objection to the motion to dismiss and appeared at the hearing on July 11, 2006. On this date, Judge McGuirl appeared to see the merit of complainant's argument that, even though the decision was dated, the decision did not specifically say that the date was the mailing date. [A party must appeal within thirty days of the mailing date.] However, she did not seem to feel that the document that the complainant filed within thirty-one days of the mailing date was sufficient to constitute a complaint. She stated that she would consider the matter and issue a decision on the motion to dismiss from the bench at a later date. On February 22, 2007, the complainant filed a Supplemental Memorandum of Law relating to the Motion to Dismiss in Superior Court. On February 28, 2007, the respondent filed a Response to complainant's Supplemental Memorandum. On April 12, 2007, Justice McGuirl issued a bench decision denying respondent's Motion to Dismiss. Justice McGuirl held that the appeal was timely because the date on the decision did not give a pro se complainant sufficient notice of the mailing date and he therefore could rely on the later date on the envelope, that the "Stipulation" he submitted was sufficient to constitute a complaint and that notice of

the appeal was timely. She set dates for filing briefs. Mr. Idowu must file by May 11. Cohoe's and the Commission must file by May 25. She set the matter down for further hearing on June 8.

#### **Joint v. DeMarkey and Rhode Island Commission for Human Rights**

The individual respondent filed an appeal of the Commission Decision and Order and the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough. He rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. He said that the respondent had waived his right to raise the issue that the charge was not timely filed. He held that the Commission complaint had given the respondent sufficient notice of the charges against him. He overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship has ended. The respondent sent Magistrate Keough a proposed Judgment and Order. There is a procedure for appealing a magistrate's Order to the Superior Court for review by a Superior Court judge. The time period for that appeal is short (48 hours), so the Commission filed that appeal on September 27. The matter was scheduled to be heard on the Formal and Special Cause calendar on October 4, 2006. Justice Rogers

wrote the parties a letter stating that Chief Justice Williams, in a series of monthly letters, has conferred on Magistrate Keough all the powers of a Superior Court judge and that therefore, appeal was to the Rhode Island Supreme Court. Ms. DeMarkey and the Commission filed a Petition for Certiorari and Memorandum in Support. In the meantime, Mr. Joint's attorney filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The parties agreed that this matter would pass until the Supreme Court acted on the Petition for Certiorari. The parties also agreed that the Commission would delay discovery, on the issue of Mr. Joint's eligibility to claim attorney's fees, until after the Rhode Island Supreme Court acted on the Petition. Mr. Joint filed for a third extension of time to file his objection to the Petition. The Commission received Mr. Joint's Objection to the Petition for Certiorari and Memorandum in Support of Objection on February 13, 2007.

#### **King v. City of Providence Police Dept.**

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been

**subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has apparently been granted. The Commission has received no word on a new trial date.**

#### **Laboy v. Stat Health Services**

**Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.**

#### **Pilkington US AGR Auto Glass Replacement and Theroux v. D'Alessio and RICHR**

**Pilkington and Mr. Theroux have filed an appeal of the Commission Decision and Order. They made a motion to stay the Commission Order. The Court denied the motion to stay with respect to the Commission's order that the respondent post the Commission poster. The Court granted the motion to stay with respect to the rest of the Order, but Commission Counsel's request that the respondent be ordered to post a bond of \$300,000 was granted. Briefs and the administrative record are due to be filed in court by May 15, 2007.**

#### **Ponte v. GTECH**

**The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality**

**Act and that redaction of the health care information would be burdensome. The hearing on a motion to compel RICHR to produce was heard 9/27. The parties agreed on an Order. Still waiting for Order to be filed in Court. Case may be settled. Case not settled, so RICHR got an extension from Court to comply with Order. Compliance commenced.**

#### **RICHR and Butler v. Kong**

**The complainant elected to have this housing matter resolved outside of the Commission. AG refused to take case because of lack of cooperation from complainant. Suit was filed on behalf of the complainant and service has been effectuated. The respondents have filed an Answer. Motion to compel compliance with discovery is set for 4-2-07. Motion granted, defendant to comply by 5-2-07.**

#### **RICHR and Rossi v. Attruia**

**A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Judgment entered against Defendant. Payments on the judgment continue to be made on schedule. Payments now made directly to individual plaintiff.**

#### **RICHR v. Cardinale**

**A complaint for enforcement was filed with request for TRO which was granted. Hearing on Preliminary Inj. continued to 8/15. No service on respondent. Atty. entered for respondent and hearing was 9/29 on TRO and Motion to Attach. The hearing scheduled was**

continued to 1/12 at the request of defendant's attorney as the defendant was incarcerated. The hearing was held on 1/12. The parties submitted additional written arguments. Justice Thunberg has taken the case under advisement. Decision for Commission was entered.

**RICHR v. Cardinale, et al.**

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. A lis pendens was filed in the Land Evidence Records for the town of Scituate. AEGIS and MERS were served. Discovery to commence.

**RICHR v. Cardinale, et al.**

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Onorato Cardinale, Rebecca Anthony and Aquidneck Island Developments, LLC. Discovery to commence.

**RICHR and Powell v. Cinotti**

The respondent elected to have this housing matter resolved outside of the Commission. Suit was filed on behalf of the complainant and a copy of the complaint was sent to the attorney for the respondents who agreed to accept service. Answer filed and discovery was to



commence. Respondent made offer to settle and the complainant agreed. Angie sent out the withdrawal with settlement form to the complainant. The respondents are seeking additional time to pay. Depositions to be scheduled as no settlement effectuated. Settlement reached and first payment received.

#### **RICHR and Lovegrove v. Escolastico**

Default was entered against the defendant. Judgment was obtained and sent to FL lawyer for collection. Affidavit executed for FL attorneys so that RI judgment can be entered in Ct. and given full faith and credit. The FL attorneys have deposed Mr. Escolastico and determined that he has very few assets and a small salary. The Commission will ask the complainant to consider whether she wishes to accept small monthly payments. Settlement authorized.

#### **RICHR and Morin v. Teofilo Silva, et al.**

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.

#### **RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport**

Case resolved. Commission must annually monitor City training.

### **Seymour v. Harvard Pilgrim Health**

**Motion of the defendant to dismiss the complaint for failure to comply with discovery was down for hearing on May 7, 2006. Plaintiff produced discovery, case is moving forward in Court.**

### **South Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights**

**The respondents have appealed the Commission Decision and Order. The parties have agreed that the Commission will delay filing of its record until motions pending before the Commission have been decided.**

### **Tucker v. Blue Cross**

**The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court.**